

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANTHONY HILL,

Plaintiff,

-against-

CHRISTOPHER MILLER,

Defendant.  
-----X

KIMBA M. WOOD, United States District Judge:

Anthony Hill's ("Petitioner") Rule 60(b)(4) motion to vacate the judgment against him is currently pending before the Court. On February 26, 2020, Petitioner filed a single document containing a reply to Judge Robert Lehrburger's Amended Report & Recommendation (ECF No. 52); a notice of appeal from the Amended Report & Recommendation; a motion for appointment of counsel on appeal; and a motion to proceed *in forma pauperis* during his appeal. (ECF No. 55.)

The Amended Report & Recommendation from which Petitioner seeks to appeal was not a final order or judgment. Thus, Petitioner's notice of appeal, motion for appointment of counsel, and motion to proceed *in forma pauperis* are denied as premature, without prejudice to Petitioner to re-file these documents should this Court deny his pending Rule 60(b)(4) motion. *See United States v. Rodgers*, 101 F.3d 247, 252 (2d Cir. 1996) (defendant's "premature" appeal, prior to entry of a final order, was a "nullity" that did not "divest the district court of jurisdiction").

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 3/3/20

15-CV-06256 (KMW)

ORDER

The merits of Petitioner's reply to the Amended Report and Recommendation shall be addressed in a forthcoming Opinion.

SO ORDERED.

Dated: New York, New York  
March 3, 2020



---

KIMBA M. WOOD  
United States District Judge